

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 44

Citations Affected: IC 16-41-6-1; IC 31-37-19-12; IC 31-37-19-17.4; IC 35-38-1-9.5; IC 35-38-1-10.5; IC 35-38-1-10.6; IC 35-38-1-10.7; IC 35-38-2-2.3; IC 35-41-1-19.3; IC 35-41-1-19.4.

Synopsis: Courts and HIV testing. Conference committee report for ESB 44. Specifies that a person may not perform an HIV test unless the individual being tested provides oral or written consent. Corrects certain cross-references that relate to HIV testing after convictions for certain sex and substance abuse offenses. Makes other changes and conforming amendments. (The introduced version of this bill was prepared by the sentencing policy study committee.) **(This conference committee report removes language: (1) requiring a state or local government officeholder who has been subject to a judgment: (A) of at least \$15,000 for delinquent child support payments; and (B) for more than 60 days; to be removed from office; (2) that permitted an employee who is the victim of a crime to take unpaid leave from work to attend court proceedings and confer with the prosecuting attorney concerning the crime unless the employee's absence would cause significant difficulty or expense to an employer; (3) that prohibited an employer from reducing employee benefits to an employee who is absent from employment in order to: (A) file a petition for an order for protection; (B) attend a hearing regarding an order for protection; and (C) exercise certain rights of the employee as a victim, in certain circumstances; (4) that prohibited an employer from refusing to employ an individual who has exercised the individual's rights to attend court proceedings or to confer with a prosecuting attorney; (5) that required that employment records concerning an employee's absence to: (A) confer with a prosecuting attorney; (B) file a petition for an order for protection; (C) attend a hearing regarding an order for protection; or (D) exercise certain rights of the employee as a victim; be kept confidential; and (6) that required a prosecuting attorney to advise a victim of the victim's rights as an employee.)**

Effective: Upon passage.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 44 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 16-41-6-1 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as
- 4 provided in IC 16-41-10-2.5 and subsection (b), a person may not
- 5 perform a screening or confirmatory test for the antibody or antigen to
- 6 HIV without the **oral or written** consent of the individual to be tested
- 7 or a representative as authorized under IC 16-36-1. A physician
- 8 ordering the test or the physician's authorized representative shall
- 9 document whether or not the individual has consented. The test for the
- 10 antibody or antigen to HIV may not be performed on a woman under
- 11 section 5 or 6 of this chapter if the woman refuses under section 7 of
- 12 this chapter to consent to the test.
- 13 (b) The test for the antibody or antigen to HIV may be performed if
- 14 one (1) of the following conditions exists:
- 15 (1) If ordered by a physician who has obtained a health care
- 16 consent under IC 16-36-1 or an implied consent under emergency
- 17 circumstances and the test is medically necessary to diagnose or
- 18 treat the patient's condition.
- 19 (2) Under a court order based on clear and convincing evidence
- 20 of a serious and present health threat to others posed by an
- 21 individual. A hearing held under this subsection shall be held in
- 22 camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4 of this chapter.

(5) The test is required or authorized under IC 11-10-3-2.5.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 2. IC 31-37-19-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be:

(1) ~~a sex crime listed in IC 35-38-1-7.1(e)~~ **an offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3)** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in IC 35-38-1-7.1(b)(8); or~~

(2) an offense ~~related~~ **relating** to controlled substances ~~listed in IC 35-38-1-7.1(f)~~ **(as defined in IC 35-41-1-19.4)** if the offense involved:

(A) the delivery by a person to another person; or

(B) the use by a person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(b) The juvenile court shall, in addition to any other order or decree the court makes under this chapter, order the child to undergo a screening test for the human immunodeficiency virus (HIV).

(c) If the screening test indicates the presence of antibodies to HIV, the court shall order the child to undergo a confirmatory test.

(d) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health.

(e) The state department of health shall do the following:

(1) Notify **potentially affected** victims of the ~~crimes listed in IC 35-38-1-7.1(e) and IC 35-38-1-7.1(f)~~ **offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3) or offense relating to controlled substances (as defined in IC 35-41-1-19.4)** of the HIV screening results.

(2) Provide counseling regarding HIV and a referral for appropriate health care to the victims.

SECTION 3. IC 31-37-19-17.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.4. (a) This section applies if a child is a delinquent child under IC 31-37-1 due to the commission of a delinquent act that, if committed by an adult, would be ~~a sex crime listed in IC 35-38-1-7.1(e)~~ **an offense relating to a criminal sexual act (as defined in IC 35-41-1-19.3).**

(b) The juvenile court may, in addition to any other order or decree the court makes under this chapter, order:

(1) the child; and

(2) the child's parent or guardian;

to receive psychological counseling as directed by the court.

SECTION 4. IC 35-38-1-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.5. A probation officer shall obtain confidential information from the state department of health under IC 16-41-8-1 to determine whether a convicted person was a carrier of the human immunodeficiency virus (HIV) when the crime was committed if the person is:

(1) convicted of ~~a sex crime listed in section 7.1(e) of this chapter~~ **an offense relating to a criminal sexual act** and the ~~crime~~ **offense** created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in section 7.1(b)(8) of this chapter;~~ or

(2) convicted of an offense relating to controlled substances ~~listed in section 7.1(f) of this chapter~~ and the offense involved: the conditions described in section 7.1(b)(9)(A) of this chapter:

(A) the delivery by any person to another person; or

(B) the use by any person on another person; of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

SECTION 5. IC 35-38-1-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) The court:

(1) shall order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the person is:

(A) convicted of ~~a sex crime listed in section 7.1(e) of this chapter~~ **an offense relating to a criminal sexual act** and the ~~crime~~ **offense** created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in section 7.1(b)(8) of this chapter;~~ or

(B) convicted of an offense ~~related~~ **relating** to controlled substances ~~listed in section 7.1(f) of this chapter~~ and the offense involved: ~~the conditions described in section 7.1(b)(9)(A) of this chapter.~~

(i) the delivery by any person to another person; or

(ii) the use by any person on another person; of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact; and

(2) may order that a person undergo a screening test for the human immunodeficiency virus (HIV) if the court has made a finding of probable cause after a hearing under section 10.7 of this chapter.

(b) If the screening test required by this section indicates the presence of antibodies to HIV, the court shall order the person to undergo a confirmatory test.

(c) If the confirmatory test confirms the presence of the HIV antibodies, the court shall report the results to the state department of health and require a probation officer to conduct a presentence investigation to:

- (1) obtain the medical record of the convicted person from the state department of health under IC 16-41-8-1(a)(3); and
- (2) determine whether the convicted person had received risk counseling that included information on the behavior that facilitates the transmission of HIV.

(d) A person who, in good faith:

- (1) makes a report required to be made under this section; or
- (2) testifies in a judicial proceeding on matters arising from the report;

is immune from both civil and criminal liability due to the offering of that report or testimony.

(e) The privileged communication between a husband and wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section.

(f) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

SECTION 6. IC 35-38-1-10.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.6. (a) The state department of health shall notify victims of ~~the crimes listed in section 7.1(e) and 7.1(f) of this chapter~~ **an offense relating to a criminal sexual act or an offense relating to controlled substances** if tests conducted under section 10.5 or ~~section~~ 10.7 of this chapter confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

SECTION 7. IC 35-38-1-10.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.7. (a) Upon:

- (1) written request made to a prosecuting attorney by an alleged victim of ~~a sex offense listed in section 7.1(e) of this chapter;~~ **an offense relating to a criminal sexual act;** and
- (2) after a hearing held under this section, a court entering a finding that there is probable cause to believe the alleged victim is a victim of ~~a sex offense listed in section 7.1(e) of this chapter~~ **an offense relating to a criminal sexual act** that was committed by the defendant;

the court may order an individual named as defendant in the prosecution of the offense to undergo a screening test for human immunodeficiency virus (HIV).

(b) Before issuing an order for testing under subsection (a), the court shall conduct a hearing at which both the alleged victim and the defendant have the right to be present. Both the alleged victim and the defendant must be notified of:

- (1) the date, time, and location of the hearing; and
- (2) their right to be present at the hearing.

(c) During the hearing, only affidavits, counteraffidavits, and medical records that relate to the material facts of the case used to support or rebut a finding of probable cause to believe the alleged victim was exposed to human immunodeficiency virus (HIV) as a

1 result of the alleged ~~sex~~ offense **relating to a criminal sexual act** may
2 be admissible.

3 (d) The written request of the alleged victim made under subsection
4 (a) must be filed by the prosecuting attorney with the court and sealed
5 by a court.

6 (e) The requirements of section 10.5 of this chapter apply to testing
7 ordered by a court under this section.

8 (f) If the defendant has not been convicted, the results of a test
9 conducted under this section shall be kept confidential. The results may
10 not be made available to any person or public or private agency other
11 than the following:

- 12 (1) The defendant and the defendant's counsel.
- 13 (2) The prosecuting attorney.
- 14 (3) The department of correction.
- 15 (4) The victim and the victim's counsel.

16 (g) A victim may disclose the results of a test to an individual or
17 organization to protect the health and safety of or to seek compensation
18 for:

- 19 (1) the victim;
- 20 (2) the victim's sexual partner; or
- 21 (3) the victim's family.

22 (h) A person that knowingly or intentionally:

- 23 (1) receives notification or disclosure of the results of a test under
24 this section; and
- 25 (2) discloses the results of the test in violation of this section;

26 commits a Class B misdemeanor.

27 SECTION 8. IC 35-38-2-2.3, AS AMENDED BY P.L.60-2006,
28 SECTION 9, AND AS AMENDED BY P.L.140-2006, SECTION 24,
29 AND P.L.173-2006, SECTION 24, IS CORRECTED AND
30 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
31 PASSAGE]: Sec. 2.3. (a) As a condition of probation, the court may
32 require a person to do a combination of the following:

- 33 (1) Work faithfully at suitable employment or faithfully pursue a
34 course of study or vocational training that will equip the person
35 for suitable employment.
- 36 (2) Undergo available medical or psychiatric treatment and
37 remain in a specified institution if required for that purpose.
- 38 (3) Attend or reside in a facility established for the instruction,
39 recreation, or residence of persons on probation.
- 40 (4) Support the person's dependents and meet other family
41 responsibilities.
- 42 (5) Make restitution or reparation to the victim of the crime for
43 damage or injury that was sustained by the victim. When
44 restitution or reparation is a condition of probation, the court shall
45 fix the amount, which may not exceed an amount the person can
46 or will be able to pay, and shall fix the manner of performance.
- 47 (6) Execute a repayment agreement with the appropriate
48 governmental entity to repay the full amount of public relief or
49 assistance wrongfully received, and make repayments according
50 to a repayment schedule set out in the agreement.
- 51 (7) Pay a fine authorized by IC 35-50.

(8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.

(9) Report to a probation officer at reasonable times as directed by the court or the probation officer.

(10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.

(11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.

(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of ~~a sex crime listed in IC 35-38-1-7.1(e)~~ **an offense relating to a criminal sexual act** and the ~~crime offense~~ created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); ~~as described in IC 35-38-1-7.1(b)(8);~~ or

(B) the person had been convicted of an offense ~~related~~ **relating** to a controlled substance ~~listed in IC 35-38-1-7.1(f)~~ and the offense involved: ~~the conditions described in IC 35-38-1-7.1(b)(9)(A);~~

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a

reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) *Participate in a reentry court program.*

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

(f) When a court imposes a condition of probation described in subsection (a)(17):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

(g) *As a condition of probation, a court shall require a person:*

(1) *convicted of an offense described in IC 10-13-6-10;*

1 (2) *who has not previously provided a DNA sample in accordance*
 2 *with IC 10-13-6; and*

3 (3) *whose sentence does not involve a commitment to the*
 4 *department of correction;*

5 *to provide a DNA sample as a condition of probation.*

6 SECTION 9. IC 35-41-1-19.3 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE UPON PASSAGE]: **Sec. 19.3. "Offense relating to a**
 9 **criminal sexual act" means the following:**

10 **(1) Rape (IC 35-42-4-1).**

11 **(2) Criminal deviate conduct (IC 35-42-4-2).**

12 **(3) Child molesting (IC 35-42-4-3).**

13 **(4) Child seduction (IC 35-42-4-7).**

14 **(5) Prostitution (IC 35-45-4-2).**

15 **(6) Patronizing a prostitute (IC 35-45-4-3).**

16 **(7) Incest (IC 35-46-1-3).**

17 **(8) Sexual misconduct with a minor under IC 35-42-4-9(a).**

18 SECTION 10. IC 35-41-1-19.4 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE UPON PASSAGE]: **Sec. 19.4. "Offense relating to**
 21 **controlled substances" means the following:**

22 **(1) Dealing in or manufacturing cocaine or a narcotic drug**
 23 **(IC 35-48-4-1).**

24 **(2) Dealing in methamphetamine (IC 35-48-4-1.1).**

25 **(3) Dealing in a schedule I, II, or III controlled substance**
 26 **(IC 35-48-4-2).**

27 **(4) Dealing in a schedule IV controlled substance**
 28 **(IC 35-48-4-3).**

29 **(5) Dealing in a schedule V controlled substance**
 30 **(IC 35-48-4-4).**

31 **(6) Possession of cocaine or a narcotic drug (IC 35-48-4-6).**

32 **(7) Possession of methamphetamine (IC 35-48-4-6.1).**

33 **(8) Possession of a controlled substance (IC 35-48-4-7).**

34 **(9) Possession of paraphernalia (IC 35-48-4-8.3).**

35 **(10) Dealing in paraphernalia (IC 35-48-4-8.5).**

36 **(11) Offenses relating to registration (IC 35-48-4-14).**

37 SECTION 11. An emergency is declared for this act.

(Reference is to ESB 44 as reprinted April 11, 2007.)

Conference Committee Report
on
Engrossed Senate Bill 44

Signed by:

Senator Bray
Chairperson

Representative Lawson L

Senator Lanane

Representative Foley

Senate Conferees

House Conferees